

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRITS No. 4124 of 2004

KANHAIYALAL SHARMA
V/S
STATE & ORS.

Mr. RS CHARAN, for the appellant / petitioner

Date of Order : 24.9.2004

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner.

It is contended by the learned counsel that the petitioner was granted second selection scale since 1.12.1997 on account of his having completed 18 years of service since his initial appointment as Sub Nakerdar on which post he was appointed on 1.12.1979. Then subsequently vide order Annexure-2 dt. 26.4.2002, this order was recalled as it occasioned some anomaly in the pay. Thereafter the petitioner made a representation, and then vide Annexure-4 dt. 3.10.2002 again he was sanctioned second selection scale w.e.f. 1.12.1997. But then, vide Annexure-6 it has been modified, and an order has been passed to the effect that on examination of the service record it transpires that the petitioner was appointed as Sub Nakerdar on 1.12.1979, and thereafter he was promoted on the post of Nakerdar on 1.12.1983, therefore, he becomes entitled to second selection scale on completion of 18 years of service w.e.f. the date of promotion i.e. 1.12.1983, and accordingly his pay fixation was purportedly made. Obviously, order for recovery of the amount paid to the petitioner in excess was made and pursuant thereto office order was passed being Annexure-5.

It is contended by the learned counsel for the petitioner that before passing the orders Annexure-5 and 6, no opportunity of hearing was given to the petitioner, and as such no recovery can be ordered to be made.

Learned counsel was pointedly put as to whether the date of appointment, and promotions are correct, to which learned counsel admitted that the petitioner was appointed on 1.12.1979, and was promoted as Nakerdar on 1.12.1983. In that view of the matter, it cannot be disputed that the petitioner becomes entitled to second selection scale only on completion of 18 years of service from the date of such promotion being 1.12.1983.

This Court in in Abdul Salam Vs. Maharana Pratap University & Ors. S.B.Civil Writ Petition No. 1377/2003 decided on 24.2.2004 while considering the question as to whether recovery can be ordered from the employee who has been erroneously paid some emoluments held as under:-

“..while exercising jurisdiction under Article 226, larger interests are also not to be ignored, and cannot be ignored, inasmuch as, after all, the amount paid to the employee, whether by the Government, or by the University, or by the Statutory Corporation, is a money coming from public exchequer, which is tax payer's money, a public money, and simply because of the fact, that it has traveled to the pocket of the employee, by some error, on the part of some person in the establishment of the employer, though not for any fault of the employee, cannot, and should not, always be allowed to cost the state exchequer/public money. In that event, if the state exchequer is not to be allowed to suffer, then the amount is to be recovered from some person, who so ever it be. In that event, may be, that disciplinary proceedings may be required to be initiated against the person at fault, in making the payment, and on the conclusion of the enquiry, recovery may be ordered to be made from him, and in that process, may be, that, that person either may have retired, or may retire, on in cases, even may have died, in that event if recovery is made, it would cause far greater hardship, as compared to the one, if the recovery is effected from the employee himself. The principle of 'unjust enrichment' is attached with greater rigor, when the money sought to be retained, is a public money, or coming from State Exchequer. The fact remains that, may be, that employee may not be at fault, but he has received the amount to which he is not entitled, there is no equitable justification, to entitle him to retain the amount, at the cost of state exchequer, which ultimately adversely effects the public at large, until and unless, there are obviously very strong, and out weighing equitable consideration in favour of the employee. Otherwise accepting the proposition, as propounded by learned counsel for the petitioner, may result into huge adverse financial implications on the state exchequer/public money, simply under the cover

of the recipient employee not being at fault. Therefore, even on the larger consideration of public policy also, it cannot be ruled as an absolute proposition, that in every case, wherever the amount has been received by the employee, without any fault on his own part, should never be recovered from him”.

In absence of any equitable considerations having been pleaded by the petitioner, the recovery cannot be quashed simply because the petitioner has been paid the excess amount which on admitted position he was not entitled to.

Coming to the question of absence of notice to the petitioner before passing the impugned order, suffice it to say that this aspect has been dealt with by this Court thread bare in *Shakuntala Sain Vs. State of Rajasthan S.B.Civil Writ Petition No. 1641/2002* decided on 23.5.2002, after considering the series of judgments of Hon'ble the Supreme Court, and by following them it was held as under:-

“..that requirement of giving opportunity of hearing, or holding enquiry, or complying with the principles of natural justice, cannot be insisted upon like 'a rule of thumb' irrespective of facts and circumstances of a given case. In the very nature of things, what is sought to be insisted upon is the requirement of complying with “principle of natural justice”. Obviously when there is no injustice in view of the facts found above, if considered on the parameters and principles propounded by Hon'ble the Supreme Court in all the above cases, requirement of principles of natural justice cannot be insisted.”

Shakuntala Sain's case was a case where a Anganwadi worker was removed from service without holding any formal enquiry, and without issuing any notice to show cause as to why her services may not be terminated, and after considering the circumstances of that case and following various Supreme Court judgments, the removal was held to be valid. That judgment has been upheld by the Division Bench in *Shakuntala Vs. State D.B.Civil Special Appeal (Writ) No. 716/2002* decided on 2.8.2004.

Since in the present case it is not in dispute that the petitioner was promoted on 1.12.1983, and second selection scale is admissible on completion of 18 years of service from that date, I am not inclined to accept this contention of impugned order being vitiated on account of absence of opportunity of hearing to the petitioner.

The writ petition thus has no force, and is hereby dismissed summarily.

(N P GUPTA),J.

/Sushil/